

S.B. 187
ALCOHOL AMENDMENTS
Sen. John Valentine/Rep. Greg Hughes

- **“BAR STRUCTURES” IN RESTAURANTS.**

- “Bar” is defined as a counter or similar structure at which an alcoholic beverage or product is stored or dispensed, or from which an alcoholic beverage is served. “Bar structure” means a surface or structure on the premises of a restaurant if on or at any place of the surface or structure an alcoholic beverage or product is stored or dispensed. (*Lines 249-260*)
- “Grandfathering” of bar structures. (*1870-2017; 2482-2526; and 2537-2630*). Any full-service or limited-service restaurant that, as of May 11, 2009, had patron seating at a bar structure that was divided by a partition along the width or length of the structure, or was under construction as of May 12, 2009 and is granted a license by the commission by December 31, 2009, may allow adults to be seated at the bar and served alcohol without the partition. This “grandfathering” continues if the restaurant changes ownership. (*Lines 1875-1919*).
- Alcoholic beverages may be dispensed only from: (1) a “grandfathered” bar structure; (2) an area adjacent to a “grandfathered” bar structure that is visible to a patron sitting at the “grandfathered” bar structure if that area was used to dispense an alcoholic beverage as of May 12, 2009 (i.e. a service bar near the bar structure); or (3) an area that is separated from the dining, staging, lobby, or waiting areas by a solid, opaque, permanent structural barrier so that the dispensing or storage of alcohol is not readily visible and accessible to restaurant patrons. (The restaurant may continue to provide wine service for wine brought into the restaurant by a patron - i.e. “brownbagged”.)
- If a restaurant remodels, it loses the above “grandfathering” benefit. (*Lines 1913-1919*). However, as an incentive, if a restaurant wants to eliminate a “grandfathered” bar structure and remodel the restaurant to dispense and store liquor in an area described in (3) above, the restaurant will receive a credit for liquor purchases from a state store or package agency for the actual costs of the remodel or \$30,000 whichever is less. The total amount appropriated for these credits is \$1,000,000 awarded on a first come, first served basis. To receive the credit, the licensee must complete the reconstruction by December 31, 2011, and apply for the credit no later than April 1, 2012.
- Patrons may consume alcohol at their table, a counter, or a “grandfathered” bar structure where food is served.
- Minors may not sit or be served food or beverages at a “grandfathered” bar structure.
- Minors may perform maintenance and cleaning services at bar structures when the restaurant is not open for business.
- Minors may momentarily pass by a “grandfathered” bar structure en route to an area where a minor is permitted to be, but may not remain or sit at a bar structure.
- Minors may be seated at a “counter”. Counter includes a surface or structure in a dining area of a restaurant where seating is provided for service of food, but not if alcohol is stored or dispensed there. Alcoholic beverages may be consumed at a

counter. Thus, a minor may be seated next to an adult patron that is consuming an alcoholic beverage if that beverage was dispensed from a remote location separate and not visible to restaurant patrons. (*Lines 340-347*)

- Liquor bottles may be displayed in areas visible to restaurant patrons. Such bottles may be used for dispensing, but once opened, must be stored in the separate storage/dispensing area not visible to restaurant patrons.

- **PRIVATE CLUBS**

- Creates four types of clubs:
 - equity (organized for a social, recreational, patriotic, or fraternal purpose; has members; limits access to members and their guests; owns, maintains, or operates a substantial recreational facility in conjunction with a club house such as a golf course or tennis facility; has at least 50% of members with full voting rights and an equal share of the equity of the club(*Lines 4089-4096*) (allows for reciprocal guest privileges with other equity clubs) (*Lines 4617-4626*)
 - fraternal (organized for a social, recreational, patriotic, or fraternal purpose; has members; limits access to members and their guests; has no capital stock; has a representative form of government and a lodge system with a supreme governing body)(allows for reciprocal guest privileges with members of same fraternal organization) (*Lines 4110-4135*)
 - dining (commission determines based on square footage, seating capacity, portion used for dining vs. bar area, whether full meals are served, whether entertainment is suitable for minors, maintains 50% in food sales) (*Lines 4139-4157*)
 - social (doesn't meet criteria for other clubs and wants to operate as a social club) (*Lines 4158-4160*)
- Equity and fraternal clubs remain private.
- Dining and social clubs are open to the public but the club licensee may choose to restrict access to only those who are on a list and pay a fee.
- Dining and social clubs must comply with the new proof of age verification laws discussed below.
- Minors are allowed in equity, fraternal, and dining clubs but not in bar areas.
- Minors must be accompanied by an adult in a dining club
- Minors are not allowed in social clubs (except those clubs that had a minor dance hall/concert hall permit on or before May 11, 2009). (*Lines 4738-4747*). Minors may not be employed on the premises of a social club.
- Renewal fee for all clubs is \$1600 (replaces graduated fee system)
- A club licensee may not temporarily rent or lease its premises to another person unless the person agrees in writing to comply with the operational restrictions for clubs and the licensee takes reasonable steps to ensure that the person complies.
- Transition provisions: current class C & D private clubs automatically convert to dining and social clubs during the club renewal period in June upon payment of the \$1600 renewal fee. These clubs may also request to convert to a different type of club license. The new license will be effective on July 1, 2009. The

conversion does not require a redetermination of proximity requirements.

- **AGE VERIFICATION BY DINING & SOCIAL CLUB LICENSEES**

- Dining and social clubs must verify age before anyone who appears to be 35 years of age or younger may gain admittance to a social club, or obtain an alcoholic beverage in a dining club.
- The club must verify age electronically or by some other process approved by the commission by rule.
- The commission must also adopt a rule establishing guidelines for the use of age verification electronic devices. It must require that the electronic verification device display the name, age, # of the ID, birth date, gender, status & expiration date, security measures to ensure the information is not improperly used, and maintain the data for seven (7) days. (*Lines 1329-1370*)

- **NEW “RESORT” LICENSE (*Lines 3008-4062*)**

- Creates a resort license for a resort building that has at least 150 dwelling or lodging accommodations (50% of which must be owned by a person other than the resort licensee) and the building must be at least 400,000 square feet. The resort must be affiliated with a ski area that abuts the resort premises. A dwelling must be owned and used as a residence, but may be rented, loaned, leased, or hired out for a period of no longer than 30 consecutive days.
- Only four (4) of these resort licenses are available statewide.
- In addition to applying for a general resort license, the resort licensee also must apply for a series of at least four sublicenses. These include full-service restaurant, limited service restaurant, on-premise banquet facility, club, on-premise beer retailer, and resort spa sublicenses each of which must be located within the boundaries of the resort building.
- A resort spa is a spa within the resort building and as defined by commission rule. Patrons of a resort spa must be a resident of the resort, a public customer who holds a valid customer card, or an invitee who is previously authorized by a resident or holder of a customer card who agrees to host the invitee. Customer cards are good for up to three weeks. The card holder may host up to seven invitees at a time. A resort spa sublicensee must maintain detailed records which must be audited annually by the DABC. Food must be available at all times when alcoholic beverages are served. Alcoholic beverages may only be consumed at a table or counter. Alcoholic beverages may not be served to or consumed by a person at a bar. Sales hours are 10 a.m. to 1 a.m. with one additional hour for consumption. A minor may not be on the premises of the resort spa unless accompanied by an adult, or be in a lounge or bar area of the premises. A minor may not be employed to sell, dispense, or handle alcoholic beverages or work in a lounge or bar area, but a minor who is at least 16 years of age may enter the sale at a cash register.
- The overall resort licensee must ensure that each sublicense, package agency, or permit holder operates in accordance with the operational restrictions for that type of outlet. The sale and service of alcohol is done under the supervision and

direction of the resort licensee. In the event of a violation by at a sublicensed location, action may be taken against the person operating the sublicense and the person's employees or agents. Action may also be taken against the resort licensee or individual member of the licensee's management personnel if, during a three year period there is three or more disciplinary proceedings against any person operating under a sublicense, and the resort licensee has not taken reasonable steps to prevent violations.

- With respect to the overall resort licensee, 70% of the annual aggregate of the gross receipts must be from the sale of food. However, the resort licensee is not required to include in the calculation monies from the sale of a bottle of wine in excess of \$250. Room service of alcoholic beverages to adult occupants of lodging accommodations is allowed. However, the beverages may only be delivered in sealed containers in person to the adult occupant, and may not be left outside the room for retrieval by an occupant.
- The initial resort license fee is \$10,000 if four sublicenses are applied for and \$2000 for each additional sublicense. A renewal fee of \$1000 for each sublicense is required. However, if an additional sublicense is added during the renewal, an application fee of \$250 and a license fee of \$2000 is required for each additional license). A compliance bond of \$25,000 is also required.
- Package agencies in the resort are allowed to sell alcohol on Sundays and holidays (*Lines 1559-1564*)

- **ELECTION DAY SALES**

- Allows state liquor stores and all package agencies to sell on election days. (*Lines 1454-1458; 1536-1556*)

- **A CONVENTION CENTER FACILITY MUST HAVE A TOTAL OF AT LEAST 30,000 SQUARE FEET TO QUALIFY FOR AN ON-PREMISE BANQUET LICENSE.** This is in response to the ABC Commission's recent rule change to allow smaller venues like the Gathering Place at Gardner Village and the banquet facility at "LaCaille" to qualify as a "convention center" to receive a banquet license. The bill "grandfathers" those facilities that already received a banquet license that was in effect on May 11, 2009, but ends the "grandfathering" on October 31, 2011. (*Lines 2811-2813; and 2931-2939*)

- **NEW DEFINITION OF "INTOXICATED PERSON".**

- This is in response to the Utah Supreme Court decision in the Southern X-Posure case.
- New definition:

"Intoxicated" means that a person is (a) significantly impaired as to the person's mental or physical functions as a result of the use of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic

vapors, or a combination of these, and (b) exhibits plain and easily observed outward manifestations of behavior or physical signs produced by the over consumption of an alcoholic beverage. (*Lines 403-412*)

- Administrative disciplinary actions may not be brought unless the investigating officer has received training regarding the requirements of the Act related to responsible alcoholic beverage sale or service. (*Lines 1271-1277; 5534-5544*)
- **CLARIFIES THAT DABC ADMINISTRATIVE ACTIONS ARE CIVIL IN NATURE AND THAT CRIMINAL PRINCIPLES & PROCEDURES DO NOT APPLY EVEN IF THE VIOLATION BEING ADJUDICATED IS BASED ON A STATUTE THAT CAN BE PROSECUTED CRIMINALLY. BURDEN OF PROOF IS PREPONDERANCE OF THE EVIDENCE. A FINDING OF MENTAL STATE (KNOWLEDGE OR INTENT) IS NOT REQUIRED TO PROVE A VIOLATION UNLESS EXPRESSLY MADE AN ELEMENT OF THE VIOLATION BY STATUTE.** This also is in response to the Utah Supreme Court decision in the Southern X-Posure case. (*Lines 1218-1238; 5482-5488; 5534-5555*)
- **PROXIMITY PROVISIONS FOR FULL-SERVICE AND LIMITED-SERVICE RESTAURANTS.**
 - Allows the commission to waive the proximity restrictions for a new owner of a restaurant in situations where the prior owner was issued a restaurant license before a church, school, library, park or playground located in proximity to the restaurant. (*Lines 1730-1740; and 2353-2363*)
- **DOUBLES THE MANDATORY DRAM SHOP INSURANCE COVERAGE.**
 - Alcohol licensees must have a minimum of \$1,000,000 per occurrence, and \$2,000,000 in the aggregate.
 - 2009 Business and Labor Interim Committee of the Legislature must study whether a club licensee can reasonably obtain dram shop insurance coverage of the amounts required and recommend any needed changes to the Legislature for consideration during the 2010 General Session.
- **ELIMINATES THE REQUIREMENT THAT THE DABC AFFIX AN OFFICIAL STATE LABEL TO ALL LIQUOR BOTTLES & CONTAINERS.** (*Lines 5592, 5602, and 5898-5923*)
- **PROHIBITS TAMPERING WITH THE CONTENTS OF A PACKAGE OF ALCOHOLIC BEVERAGE AS ORIGINALLY MARKETING BY A MANUFACTURER (I.E. REFILLING BOTTLES, MISREPRESENTING THE BRAND, SELLING A BRAND THAT IS NOT THE SAME AS WHAT THE CUSTOMER ORDERED).** (*Lines 5692-5724*)
- **REQUIRES THE ABC COMMISSION TO CONDUCT A STUDY OF THE**

PENALTIES THE COMMISSION HAS IMPOSED FROM JANUARY 1, 2005 TO DECEMBER 30, 2008 FOR VIOLATIONS RELATING TO MINORS.

- The study must address trends, if any, in the severity of the penalties; circumstances affecting the penalties imposed; the purpose and effectiveness of the penalties; other issues as determined by the commission; and whether the commission should recommend legislative action related to the imposition of a penalty. The commission must report its findings and recommendations to the Business and Labor Interim Committee on or before the October 2009 interim meeting. (*Lines 5898-5823*)